91-1557 (1)

Supreme Court
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

Rajeshwar Singh Yadav and
Roopa Yadav -
PETITIONERS

VS.

Charles Schwab & Co., Inc.,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Rajeshwar Singh Yadav
376 North Post Road, West Windsor, N.J.08550
(516) 282-2058

QUESTIONS PRESENTED

Does the 90 day period start from the date of communicating the decision. If the 90 day period start from the date of the decision than the Arbitrators enjoy the absolute power of communicating(or recording) the decision at their will and could do it even after 90 days(in this instance about 30 days) thus violating the civil and basic rights of the party (particularly Pro-Se).

Does the equal protection of laws and due process of law apply to Pro-Se. If it does than a Pro-Se must have the same right to subpoena the records and witness as is given to a party represented by a counsel(Counsel can issue subpoena on his own).

Does Article 8 apply to Pro-Se when the life savings of about 20 years are snatched by the negligent and unauthorized act of other party(Defendant) and the

caused situation deprives the Pro-Se and his family a life style which took 20 years of work.

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1991

Rajeshwar Singh Yadav and Roopa Yadav,
Petitioners
vs.

Charles Schwab & Co., Inc.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Petitioner, Rajeshwar Singh Yadav, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Second Circuit

and judgement of District Court, Southern District of New York for dismissing the action as untimely.

OPINIONS BELOW

The Summery Order of the Court of Appeals for the Second Circuit appears in Appendix A to this Petition. The published written opinion of the Court Of Appeals of the Second Circuit appear in Appendix B to This Petition. Memorandum Opinion and Order of the District Court for Southern District of New York appears in Appendix C to this Petition.

JURISDICTION

The Court of Appeal's Summery Order was filed Oct. 21, 1991.

BRIEF STATEMENT OF THE CASE

The United States District Court, Southern District of New York had jurisdiction.

Petitioner placed a day order on Oct. 16,1987 to buy 20,000 shares of National Semi Conductor Corp.("NSC")

for Oct. 19,1987. Petitioner cancelled the order on Oct. 19,1987 morning. Defendant did not disputed the cancellation for two working days(Stock Exchange trading hours). Defendant reported after two working days that order was filled two days before. Defendant filled a cancelled order. Defendant liquidated the account causing $350,000 in damages plus additional damages since the liquidation. Petitioner initiated an arbitration. Decision of arbitration was conveyed by U.S. Certified Mail(U.S. Postal Date Stamp) July 20,89.

Petitioner received the information for the first time on or about July 23,89. Petitioner contacted the Arbitration Counsel after receiving the arbitration decision and stated that the petitioner wants to appeal the decision. The Arbitration Counsel told petitioner that the petitioner has 90 days from the date of receiving the decision to appeal in U.S.District Court or New York State Court. Petitioner went for the first time in his life in a District Court and told the Pro-Se Clerk that the petitioner wants to file an appeal to the decision of arbitrators.

Petitioner was told that the petitioner can only file a complaint. Petitioner filed a complaint on Oct. 13,1989 in U.S.District Court. Petitioner complaint was filed in time as per instructions of the Arbitration Counsel and as per instructions of the Pro-Se Clerk of the U.S. District Court.

Defendant requested a conference and filed for a summery judgement stating that the complaint was untimely. District Court did not reach the merits of the action and dismissed the complaint as untimely. Motion for reconsideration was filed and denied. Appeal was filed in U.S. Court of Appeals for the Second Circuit. Summery Order of the U.S. Court of Appeals affirmed the memorandum opinion and order of the District Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the reasons presented as follows. Opinions below in other courts clearly support that the petitioner's filing was timely. District Court and Court of Appeals did not reach the

merits of the action and only ruled on timely or untimely aspect of the action.

Court of Appeals of the Second Circuit decision to reinstate the appeal(Appendix B) clearly proves that if the mistake was not of petitioner but the Clerk's Office. Similarly the petitioner had in "Good Faith" obeyed the instructions of the Arbitration Counsel who could be construed as Clerk of the Arbitration and the petitioner must not be punished for following the instructions of Arbitration Counsel(the only legal authority determining the timing of filing the appeal). The Court of Appeals is contradicting its own decision by denying the appeal and upholding that the action was untimely. If rules are carved in stone than the Court of Appeals should not have reinstated the Appeal and should have ruled that the notice of appeal was not filed with in the time limit allowed. The petitioner's complaint must be accepted as timely because

the two situations were identical.

The final results of two identical actions or inactions of the Clerk of the Court and Clerk of the Arbitration must be the same i.e. the complaint was timely.

The following notes and their relationship to our request are presented for the Court's consideration.

> Special liberality is afforded the pleadings of Pro-Se litigants and their complaints should not be dismissed unless it is apparent beyond a doubt that no set of facts can be proved in support of the claim entitling the litigant to relief. Meyer v. Curan, D.c. PA 1975, 397 f. Supp. 512.

In our case the District Court and Court of Appeals did not reach the merits of the action. District court did not even conduct the hearing after repeated requests(Appendix D).

> When considering a motion to dismiss, District Court must consider in complaint and must construe complaint liberally. Contract Buyers League v. F. & F. Inc., D.C. Ill. 1969, 300 F. Supp. 210, Affirmed 420 F. 1d 1191 certoriri denied 91. S. Ct. 40,41,42, 400 U.S. 821 27 L.Ed. 2d 49.

The District Court had not considered the facts that petitioners had no way of knowing the date of the decision of the arbitration before July 23rd 1989.

> Philosphy of fedral pleadings leans to libral construction rather than adhearing to ritualistic formalism. Sachs v. Levy D.C. Pa. 1963, 216 F. Supp. 44.

The District Court in our action adhered to ritualistic formalism rather than facts that petitioners had no control on the conduct of arbitration and had no way of knowing the decision date before July 23,1989.

> Wheather the pleading need present a complete formal cause of action or not, it must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even thoufh it may be the theory suggested or intended by the pleader, or contain alligations from which an inference fairly may be drawn that evidance on these material points will be introduced at trial. City of Gainesville v. Florida Power & Light Co., D.C. Fla 1980, 488 F. Supp. 1258.

The District Court refused to conduct a hearing so merits of action could not be determined.

> Minimal pleadings are permitted and a complaint will survive motions to dismiss and summary judgement if plaintiff has salvaged a single genuine issue as to any material fact. Kaehni v. Diffraction Co., D.C. Md 1972, 342 F. Supp. 523, affirmed 473 F. 2d 908 certiorari denied 94 S. Ct. 151, 414 U.S. 854, 38 L. Ed 2d, 103, rehearing denied 94 S.Ct. 465, 414 U.S. 1033, 38 L. Ed. 2d 325.

Action would have survived if hearings were conducted.

> Purpose of this rule (8) prescribing simplified pleading and indicating that pleading should contain short and plain statement of claim showing that pleader is entitled to relief is to give notice to other party an not to formulate issues or fully summarize facts involved. Clausen & Sons, Inc. v. Theo Hamn Brewing Co., C.A. Minn. 1968, 395 F. 2d 388.

All facts would have been presented in the hearing and justice could have been done.

> All that is required of a plaintiff is that he place defendant on notice as to the nature of his claims and he need not specify his theory of recovery or set forth in detail the facts upon which such theory rests. Asphaltic Enterprises. Inc. v. Baldwin-Lima-Hamilton Corp., D.C. Pa 1966, 39 F.R.D. 574.

> Purpose of this rule (8) which requires that most complaint contain short and plain statement of claim showing that pleader is entitled to relief is to give fair notice of claim being asserted so as to permit adverse party oppertunity to file responsive answer prepare adequate defense and determine whether doctrine of res judicata is applicable; beyond this, this rule serves to sharpen issues to be litigated and to confine discovery and presentation of evidence at trial within reasonable bounds. Brown v. Califano, D.C. D.C. 1977,75 F.R.D. 497; Lucas v. Park Chrysler Plymouth, Inc., D.C. Ill. 1974, 62 F.R.D. 399.

Opportunity of presenting our facts/evidence was not granted.

> **Prisoner's Pro-Se complaint must be liberally construed so as to do substantial justice and for purposes of dismissal, the alligations in the complaint must be accepted as true. Cameron v. Fogarty C.A. N.Y. 1983, 705 F. 2d 676.**

No substantial justice was done in our case by dismissing the complaint as untimely when it is clear that a Pro-Se can not proceed in any other way except to follow the instructions of the legal authority(Clerks of the Court and Arbitration Counsel as Clerk of the Arbitrators)

> **In evaluting sufficiency of pleading attacked on motion, both District Court and Court Of Appeals are required to construe complaint in light most favorable to plaintiff and to take allegations contained therein is true. Mann v. Adams Reality Co. Inc. C.A. Ala.1977, 556 F. 2d 288; C.A. Ill. 1971 454 F. 2d 698, certioari denied 93 S. Ct. 202, 409 U.S. 872, 34 L. Ed. 2d 123.**

> **Pleadings should be liberally construed in the intrests of justice, perticularly when the pleader is not learned in the law. Johnsen v. Reagan C.A. Cal. 1975, 524 F.2d 1123.**

Petitioner's action was based on "Good Faith" information

timely.

> **Where plaintiff's attorney in personal injury action within time provided by rule 38(b) of these rules directed his law clerk to serve and file demand for jury trial and did not asertain that demand had not been made until case was assigned for trial and amount of damages if any was principal issue and affidavit of plaintiff's attorney showed that he did not intend to waive jury trial and that defendant could not be prejudiced by demand, plaintiff' demand for jury trial would be granted under subdivision (b) of this rule (39) although demand had not been made as provided by rule 38(b). Peterson v. Southern Pac. Co., D.C. Cal. 1940, 31 F.Supp. 29.**

Petitioner had no intention of waiving their rights to appeal the arbitration decision. Petitioner was directed that 90 days time limit starts after receiving the decision and petitioner did not ascertain that the 90 day time limit was to start at the day of decision when it was ruled untimely.

> In issue tried to court , it is function of court to determine issue of fact and credibilty of testimony. Connely v. U.S. C.A. Mo. 1959, 271. F. 2d 333, certiorari denied 80 S.Ct. 755, 756, 326 U.S. 936 4 L. Ed. 2d 750.

Petitioner was not granted this opportunity by the District Court and cut short by Court of Appeals.

> It was entirely proper, and the duty of trial judge to ask such questions as he thought necessary to get to truth of case and it was no ground of complaint that facts so developed might have hurt or helped one side or other. Hite v. Western Maryland Ry., C.A. Md. 1954, 217 F. 2d. 781 cetiorari denied 75 S. Ct. 890, 349 U.S. 960, 99 L.Ed. 1283.

> Function of court as trier of facts to determine what inference is to be drawn from evidence. Peets v. U.S. D.C. Cal. 1958, 165 F.Supp. 177.

Petitioner was denied this opportunity as stated above. No justice can be served until trial takes place to get to the truth, specially in the case of a Pro-Se.

> Constrution of pleadings. all pleadings shall be so construed so to do substainal justice

> Parties proceeding Pro-Se are to be accorde libral treatment when they attempted to grapple with the intricacies of fedral practice. Firnhaber v. Sensen Brenner, D.C. Wis. 1974, 385 F.supp. 406.

> This rule should be interpreted so that commen sense and ends of justice are not circumvented. Powers v. Troy Mills, Inc. D.C.N.H. 1969, 303 F. Supp. 1377.

> Under these rules pleading is to be liberlly construed. Droppleman v. Horsley, C.A. Okl 1967, 372 F. 2d 249.
>
> Complaint should not be dismissrd unless it appears beyond doubt that Plaintiff can prove no set of facts which would entitle him to relief Id.
>
> Where Plaintiff appeared Pro-Se and was unskilled in law, court must view his pleading and applicable procedure liberally. Moore v. Coats Co., C.A. N.J. 1959, 270 f. 2d 410.
>
> The court is bound to so construe the pleadings before it as to do substantial justice. Francis O. day Co. v. Shapiro, C.A. 1959, 267 F. 2d 669, 105 U.S. App. D.C. 392.

Common sense and ends of justice were circumvented in our case by disregard to the fact that we took action in time as determined and instructed by the Arbitration Counsel the legal authority who made that determination and we must not be punished for that determination.

Complaint was dismissed immaturely and common sense consideration was not given that we did every thing in "Good Faith" and we had no recourse of knowing the

decision date of the arbitration before about July 23,89.

No substantial justice was done.

> Where plaintiff pleads Pro-Se in a suit for protection of civil rights the court should endeavor to construe plaintiffs pleading without regard for technicalities. Picking v. Pennsylvania R. Co., C.C.A. Pa. 1945, 151 F. 2d 240, Rehearing denied 152 F. 2d 753.

> Pleader is only required to disclose adequate information as basis of claim for relief and not his evidence. Greater Valley Terminal Corp., v. Peltz St Terminals, Inc., D.C. Pa. 1957, 21 F.R.D. 167.

> UNder these rules a party should not be compelled to plead evidence or allege what would amount to a bill of perticuvars, and proof should not be made part of the complaint under guise of a motion for a more definite statement. Rudolph Wurlitzer Co., v. Atol, D.C. Minn 1952, 12 F.R.D. 173.

> Where Defendent, under the rules of discovery, rules 26-37 could easily ascertain facts sought by his motion for bill of perticulars, plaintiff should not be burdened with necessity of giving to defendent its evidence in its complaint. Walling v. Alabama Pipe Co., D.C. Mo 1942, 3. F.R.D. 159.

Petitioner's civil rights were violated by the arbitrators and this was one of the issues brought in the pleading.

No trial was conducted to resolve the issue. We were not allowed to present the evidence(sought through subpoena) by arbitrators or District Court.

> IF documents sought by way of Subpoena are relevant and are sought for good cause Subpoena should be enforced unless documents are previleged or Subpoenas are unresonable oppressive annoying or embarrasing. Convey Oil Co. v. Continental Oil Co. C.A. Utah 1965, 340 F. 2d 993 Certioari denied 85 S. Ct. 1110, 380 U.S. 964, 14 L.Ed. 2d 155.

> Records of proceedings of the arbitrators for deliberation and after deliberation were not open to the public inspection until informed by Arbiteration Counsel.

We were not allowed to subpoena the most crucial documents which could have proved whether the trade took place and at what time and at what time it was reported.Violating our rights and suppressing evidence by action of not issuing subpoena for relevant documents the arbitrators exceeded their authority. The District Court would have concluded that the arbitration was improper and biased against Pro-Se if the trial would have taken place.

> Notation of judgement on the docket on Feb 5,1954 constituted the entry of the judgement

and the judgement was not effective before that date. Greenwood v. Greenwood C.A. Pa 1956 234 F.2d 276.

The notation of a judgement in civil docket as provided by this Rule(79) constitutes an entry of the judgement and the judgement is not effective before such entry Id.

Appeal may not be taken from an openion of Fedral District Court as such nor even from a judgement until it is entered. In re Forstner Chain Corp., C.A. R.I. 1949, 177 F. 2d 572.

In our case notation of judgement or entry of judgement of arbitrators took place on July 19, 1989 and the time for appeal can not commence before that date.

Where entry of Clerk in the docket recited that judgement was rendered in favour of claiment and counsel were directed to exchange briefs and that trial was continued until a future date no final disposition occured until written judgement was signed by the trial, and apeal taken by claiment with in two days thereafter thogh more than 30 days after entry by the clerk was timely. Lucas v. Western Cas. & Sur. Co., C.A. Okl. 1949, 176 F. 2d 506.

Where openion of District Court afferming Referee's order granting discharge in bankrupty, though couched in mandatory terms was not entered in docket as an order, attempt to date subsequent order of court dismissing petition to review Referee's order back to date openion was

filed did not affect the right to appeal with in time prescribed by section 48(a) of Title 11 after entry of order of dismissal, since under said section time for appeal runs from entry of order which under subdivision (a) of this Rule(79) and Rules 58 and 77(d) of these rules is not effective before entry. St. Louis Amusement Co. v. Paramount Film Distributing Corp., C.C.A. Mo. 1946, 156 F. 2d 400.

In Fedral Courts an openion is not a part of the record proper and a statement in openion of conclusion reached by court though couched in mandatory terms can not serve as an "ORDER" or judgement of the court, but a definitive order or judgement must be made and entered in court's Docket in Due Form. In re D'Arcy, C.C.A. N.J. 1944, 142 F. 2d 313,56 Am. Bankr. Rep. N.S. 100.

Our action was timely because for us the judgement was dated June 22,1989 but the entry by the Clerk(arbitration counsel) was on July 19,1989, the time he wrote to inform us. There is no reason to believe that it was not the entry date hence the time limit can not begin before July 19,1989. Time of 90 days can not be effective before July 19, 1989. Records of arbitration were not accessible before entry of decision on July 19, 1989. and no schedule of the arbitrators deliberations was provided to

us. Only about July 23, 1989 it became known to us that decision was rendered. Theoretically if we wanted to file an appeal say after ten or fifteen days from June 22, 1989, there is no way or no power in us to know the decision of the arbitrators. The time period between June 22,1989, and about July 23,1989 was a dead period and could have been utilized as part of 90 days granted by law.

> Under "Unique Circumstances" indicating that plaintiffs in reliance upon District Court's order following receipt of a verdict in favour of defendant filed a motion for new trial with in extended period of time Trial Court did not err in granting motion for new trial even though motion was not served within 10 days as required by Rule 59 of these Rules. Eady v. Foerder C.A. Ill. 1967, 381 F. 2d 980.

In our "Unique Circumstances" that we took action in time in reliance upon Arbitration Counsel(like the clerk of the District Court, a legal authority as part of the Court) and must be construed as timely.

> Counsel' reliance on information mistakenly provided by the court as to extension of time for filing objectios to magistrat's order was excusable neglect and court would grant motion for enlargement of time. Combustion Engineering v. Miller Hydro Group, D.Me 1990,

739 F. Supp. 666.

Our reliance on information provided by the Arbitration Counsel as to effective date of starting 90 days limit must be considered in the same spirit as stated above and the action determined as timely.

> Movents demonstrated excusable neglect in failing to comply with dead line for filing forms for exclusion from a class and therefore movants were entitled to enlargement of time for filing exclusion from class; movents did not know that they had to act by a certain date because of their failure to receive notice of settlement of class action at their current address. Mars Steel Corp. v. Continental Illinois Nat. Bank and Trust Co. of Chicago. N.D.Ill.1988, 120 F.R.D. 51.

Petitioners did not know that they had to act by the 90th day after the decision date because they were told to act by the 90th day after receiving the decision.

> Where over long period of negotiations in libal case, several continuances had been granted, settlement offer had been made by defendant's local counsel, New York Counsel for defendant was of openion that arrangement had been made by local counsel for extention of time for filing answer and both attorneys for defendant were out of their respective offices for period of time during holiday season, failure to file answer constituted excusable negelact with in this rule providing that where failure to act is result of

"Excusable Neglact" court may extend time to perform the act. Anderson v. Sanco Sports Library, Inc., D.C.S.C. 1971,52 F.R.D.108.

In comparison to above citing no consideration was given to us and our treatment of ruling our action as untimely is harsh and cruel punishment considering the action above was accepted as excusable neglect. This constitutes a biased treatment of a Pro-Se.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the summery order of the Court of Appeals and the memorandum opinion and order of the District Court in this matter. If the Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be ramanded to the lower Courts.

Dated Jan. 18, 1992.

Respectfully submitted,

Rajeshwar Singh Yadav

RAJESHWAR SINGH YADAV
Petitioner

3/25/92

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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89-cv6799
kram

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of October one thousand nine hundred and ninty-one.

Present: HONORABLE IRVING R. KAUFMAN,

HONORABLE AMALYA L. KEARSE,

HONORABLE JOSEPH M. McLAUGHLIN,

Circuit judges,

RAJESHWAR SINGH YADAV AND ROOPA YADAV,

Petitioners-Appellants,

- v. - No. 91-7337

CHARLES SCHWAB & CO., INC.,

Respondent-Appellee.

Appeal from the United States District Court for

the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by prtitioners pro-se and by counsel for respondent.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed substantially for the reasons stated in Judge Kram's Memorandum Opinion and Order dated July 11, 1990.

IRVING R. KAUFMAN, U.S.C.J.

AMALYA L. KEARSE, U.S.C.J.

JOSEPH M. McLAUGHLIN,U.S.C.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDRAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term 1990

Petition for rehearing submitted: May 3, 1991 — Decided: June 13, 1991

Docket No. 91-7337

RAJESHWAR SINGH YADAV and ROOPA YADAV,

Appellants,

—v.—

CHARLES SCHWAB & CO., INC.,

Appellee.

Before:

TIMBERS, NEWMAN, and KEARSE,

Circuit Judges.

Petition for rehearing of order dismissing appeal *sua sponte* under Rule 4(a)(4) of the Federal Rules of Appellate Procedure.

Rehearing granted and appeal reinstated.

5249

RAJESHWAR SINGH YADAV and ROOPA YADAV, West Windsor, N.J., submitted papers for *pro se* appellants.

JON O. NEWMAN, *Circuit Judge*:

This petition to reconsider the dismissal of an appeal concerns the application of Rule 4(a)(4) of the Federal Rules of Appellate Procedure to an unusual fact situation complicated by an irregularity occurring in the office of the Clerk of the District Court. For reasons that follow, we conclude that our appellate jurisdiction was properly invoked, and we grant rehearing and reinstate the appeal.

Plaintiffs-appellants Rajeshwar Singh Yadav and Roopa Yadav filed a suit against defendant-appellee Charles Schwab & Co., Inc., with whom they maintained a brokerage account. On July 31, 1990, judgment was entered in the District Court for the Southern District of New York (Shirley Wohl Kram, Judge), dismissing the Yadavs' complaint and confirming a $25,000 arbitration award in Schwab's favor. On August 8, 1990, plaintiffs filed in the District Court a motion for reconsideration, and on August 30, 1990, while the reconsideration motion was pending, they filed in the District Court *pro se* a notice of appeal from the July 31 judgment. On January 16, 1991, the District Court denied the Yadavs' motion for reconsideration.

Pursuant to a recently adopted practice of this Court to examine *pro se* filings at an early date for compliance with jurisdictional requirements, this Court noticed what appeared to be a jurisdictional defect under Rule 4(a)(4).

That provision states that a notice of appeal filed before the disposition of a timely motion for reconsideration "shall have no effect." *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982); *McCowan v. Sears, Roebuck and Co.*, 908 F.2d 1099 (2d Cir.), *cert. denied*, 111 S. Ct. 250 (1990). Applying Rule 4(a)(4), we dismissed the appeal *sua sponte* in an unpublished order. No. 91-7337 (2d Cir. Apr. 24, 1991).

In seeking reconsideration of the dismissal order, the Yadavs point out that the Clerk of the District Court neglected to comply with Rule 3 of the Appellate Rules, which requires a clerk of a district court to "transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice." Fed. R. App. P. 3(d). In fact, these documents were not filed with the Clerk of this Court until April 2, 1991, when Mr. Yadav hand-carried them to our Clerk's office.

Rule 4(a)(4) is normally strictly applied to implement important policies concerning appellate practice. As we pointed out in *McCowan*, the rule prevents duplicative review in two courts, avoids unnecessary remands, and precludes appellate court consideration until a district court has ruled. *McCowan*, 908 F.2d at 1103. But these interests are served only if the clerk of a district court carries out the obligation under Rule 3(d) to transmit a copy of the notice of appeal "forthwith" to the pertinent court of appeals. There is no risk of duplication if a court of appeals never knows that a notice of appeal has been filed. Moreover, if in this case the notice had been promptly forwarded to this Court, we could have promptly dismissed the appeal at a time when the appellants would still have had 30 days to file a new notice of

appeal after the denial of their motion for reconsideration by the District Court. *See* Fed. R. App. P. 4(a)(4) ("A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion . . . .").

In this case, the failure of the Clerk's office in the Southern District to forward a copy of the notice of appeal was tantamount to holding the notice of appeal until after denial by the District Court of the motion for reconsideration, at which time a valid notice of appeal could have been filed. Though the notice did not reach us until more than 30 days from that denial, it was tendered to the District Court at an earlier date. Though Rule 4(a)(4) creates a "trap for the unwary," *see Averhart v. Arrendondo*, 773 F.2d 919, 920 (7th Cir. 1985), we see no reason to apply its terms so rigidly as to exacerbate the trap in a situation where a court official has omitted an important step in the appellate process—a step on which the strict enforcement of Rule 4(a)(4) is premised. We are mindful that Rule 3(d) of the Appellate Rules states that "[f]ailure of the clerk to serve notice [of appeal] shall not affect the validity of the appeal." However, that language appears to refer to service of the notice upon the parties, not transmission to the court of appeals; moreover, the language seems designed to make sure that lack of service does not defeat validity, not that lack of transmission cannot be a circumstance that supports validity.

For these reasons we grant the petition for rehearing of our April 24, 1991, order, vacate that order, and reinstate the appeal.

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Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rajeshwar Singh Yadav and Roopa Yadav,	x	89 CIV. 6799 (SWK)
Petitioners,	x	MEMORANDUM OPINION AND ORDER
-against-	x	
Charles Schwab & Co., Inc.,	x	
Respondent.	x	

SHIRLEY WOHL KRAM, U.S.D.J.

This is an action to vacate an arbitration award issued by the New York Stock Exchange ("NYSE"), resulting from a dispute concerning petioners' account with respondent Charles Schwab & Co. ("Schwab").[1] The arbittral award denied petitioners Rajeshwar Singh Yadav

[1]Plaintiffs Rajeshwar Singh Yadav and Roopa Yadav are proceeding pro se. Even though this complaint seeks to appeal the arbitration, and does not specifically move to vacate, this action is liberally construed as an action to vacate an arbitral award pursuant to 9 U.S.C. $ 10. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

and Roopa Yadav claim for $350,000 and granted Schwab's counterclaim, awarding the defendant $25,000. Presently before this Court is respondent's motion for summary judgment to deny plaintiffs' claim to vacate and grant Schwab's counterclaim to confirm the arbitral award.

Background

This dispute arose from trading losses incurred from trades made on October 19, 1987, which has been referred to as "Black Monday." Petitioner Rajeshwar Singh Yadav ("Mr. Yadav") and his wife, Roopa Yadav ("Mrs. Yadav"), jointly held a trading account with Schwab in October, 1987. Mr. Yadav placed an order to purchase 20,000 shares of National Semiconductor Corp. ("NSC"), and contended before the arbitration panel that he placed a cancel order with Schwab prior to the execution of the order. Yadav clains that in contravention of his cancellation instruction, Schwab wrongfully executed the order, resulting in liquidation of the Yadavs' account and a loss of $350,000.

Schwab's reply and counterclaim in arbitration alleged "that Mr. Yadav had not cancelled his order to purchase 20,000 shares of NSC, but had only attempted to do so belatedly, in a falling market, after the order had already been executed." Affidavit of Daniel Brooks at 5. During the week of October 19, 1987, as the market price of NSC continued to fall along with most other stocks, the Yadavs did not pay, according to Schwab for the 20,000 NSc shares. This failure to pay, according to Schwab, forced it to liquidate the Yadavs' account, leaving an unsecred debit account balance of $87,807. Mr. Yadav paid $30,000 of this deficit to Schwab, but refused to repay the remaining $57,807 of debit owed to Schwab. ID.

On April 11, 1988, petitioner Mr. Yadav initiated the NYSE arbiteration against Schwab. The arbitrators held hearings on March 1, May 8, June 12 and June 22, 1989. Schwab brought its counterclaim against both Mr. and Mrs. Yadav, because of their joint and several libility for account debits, and Mrs. Yadav executed a submission

agreement to be bound by arbitration on May 6, 1989. ID at 6. The panel of three arbitrators issued the unanimous arbitral award on June 22, 1989, with out opinion. The award did not grant relief on Mr. Yadav's claim; the panel awarded Schwab $25,000 for its claim of $59,709 on the debit balance.

Schwab sought to enforce the award by letter to Mr. Yadav on July 25, 1989, to which petitioer responded by letter dated August 3, 1989, that he was in the process of appealing. Instead of appealing, or filing a petition to vacate, the petitioers brought this action on October 13, 1989, rearguing the same claim that they lost in arbitration.[2] As now construed, petitioners' complaint seeks to vacate the arbitration award. Respondent counterclaims to confirm the award.

In opposition to Schwab's motion, petitioners claim that the arbitral panel prejudged their case. This alligation

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Claim preclusion would prevent the re-litigation of this claim. As noted previously, however, this Court consider the Yadav' complaint as a petition to vacate an arbitral award.

of bias is based on petitioner's contention that he overheared the arbitrators say that he had bought the stock. Petitioners' Reply to respondent's Summary Judgment Motion at 6. Petitioners further argue that bias is evidenced by the arbitrators' refusal to sign a subpoena that would have permitted petitioners to call an allegedly importatnt witness. See Supplement Affidavit of Rajeshwar Singh Yadav. In reply, Schwab argues that the refusal to sign the subpoena was immaterial, as another witness appeared who served the same purpose as the absent witness. Moreover, Schwab contends that none of the accepted grounds for vactur exist.[3]

Discussion

Section 10 of Fedral Arbitration Act (the "Act") provides that an arbitration award may be vacated only in "Cases involving fraud in the procurement of the award, misconduct, or arbitrators clearly exceeded their powers."

3

Whil defendant reviews the limited grounds for vacatur, and argues that no such grounds exist here, this Court does not reach the merits of this untimely action.

Florasynth v. Pickholz, 750 F.2d 171, 175 (2d Cir. 1984) (summarizing 9 U.S.C. $ 10 (1982)). These grounds are extremely limited, consistent with the policy of encouraging the arbitration of disputes. Section 11 permits somewhat greater flexibility to simply modify or correct an award. ID. The Act, however, provides that notice of any motion to vacate or modify an arbitration award must be served on an adversary within three months of the award's issuance. 9 U.S.C. $ 12 (1988). This three month limitations period is strictly applied in this Circuit. Florasynth, supra, 750 F.2d at 175; Pennsylvania Engineering v. Islip Resource Recovery, 714 F. Supp. 634 (E.D.N.Y. 1989). In no uncertain language, the Florasynth Court stated

> ... there is no common law exception to the three month limitations period on the motion to vacate. ... The action to enforce an arbitration is a creature of statute and was unknown in common law. ...

750 F.2d at 175. Because this action is liberally construed as a motion to vacate, it shall be dismissed if the three

month limitation period has not been met.

The arbitrators issued their award on June 22, 1989, after four days on which hearings were held. See Arbtral Award dated June 22, 1989, attatched as Defendant's Exhibit E. To comply with 12, the plaintiffs would have had to bring this action no later than September 22, 1989. This action was not filed until October 13, 1989. This action to vacate therefore must be dismissed as untimely.

Section 9 of Act provides in part that an action to confirm an arbitration award must be made within one year of issuance, and that this Court "must grant such an order [to confirm] unless the award is vacated, modified or corrected as prescribed in sections 10 and 11 of this title." 9 U.S.C. $ 9 (1988). Defendant's counterclaim for confirmation of the $25,000 was brought on November 9, 1989, well within the one year period of limitations. This Court must confirm this award as it is not subject to vacatur or modification. See Florasynth, supra, 750 F.2d at 177 ("When the three month limitations period has run without vaction of the arbitration award, the successful

party has a right to assume the award is valid and untainted, and to obtain its confirmation in a summary proceeding."). Accordingly, this award is confirmed and a judgment should be so entered.

Conclusion

For the aforemetioned reasons, the defendant's motion for summary judgment is granted, dismissing plaintiff's complaint and confirming the arbitration award of $25,000.

SO ORDERED.

SHIRLEY WOHL KRAM

UNITED STATES DISTRICT JUDGE

Dated: New York, New York

July 11, 1990

Appendix D

Rajeshwar Singh Yadav

376 North Post Road

West Windsor N.J. 08550

(516) 282-2058

March 25, 1991

Hon. Shirley Wohl Kram

United States District Judge

Southern District of New York

United States Courthouse - Room 2601

Foley Square, NY 10007

Re: Yadav v. Charles Schwab & Co., INc.;

89 Civ. 6799 (swk)

Your Honor,

We respectfully urge you not to sign the proposed order for the defendant. We appeal to you for

justice and for sake of justice we request and plead for reconsideration. We urge you to hear our case and make the determination by hearing all the facts. We request you to grant the opportunity to perfect our appeal in a hearing. We believe that for us(not being attorneys) a hearing is the only avenue to present the facts for you to do justice to us.

We respectfully state that our handicap of not knowing the language should not be used against us. Justice can only be served by giving us equal opportunity to present our case in a hearing so that your honor can question both parties to know the facts to make the final determination.

In conclusion

We urge you to justice and not sign the order and grant us a hearing.

Respectfully Submitted,

Rajeshwar Singh Yadav

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAJESHWAR SINGH YADAV

ROOPA YADAV

Plaintiff:

v.

89 Civ. 6799 (SWK)

Reply to affidavit in opposition to motion to vacate order.

CHARLES SCHWAB & CO., INC.,

Defendant.

We respectfully state the following in reply to the affidavit in the opposition to vacate the order.

1. If perfecting the appeal was irrelevant than why was it made the cause and reason for the order. Is the

assertion of the respondent to influence the court and degrade the petitioners.

2. The assertion that petitioners statements may not be true is again an attempt to influence the court and degrade the petitioners. The respondents should have got the same information(upon their inquiry before April 4, 1991) from the clerk's office of U.S. Court of Appeals that notice of appeal was not filled with that office and it was known to the respondents that the notice was filed(as it was in the file). The respondents know very well that Pro-Se can not proceed further until notified by the Court of Appeals. Knowing all these facts still the respondents prepared the order stating that the petitioners failed to perfect the appeal and that is why the order was signed.

3. The petitioners have been notified by the court of appeals to submit the brief by May 15,1991. The petitioners will follow the directive of the court.

4. The petitioners must not be unduly punished for the circumstances beyond their control.

5. The petitioners again respectfully state that the court's denial of hearing(oral arguments. only way the petitioners could explain ALL the facts for true justice) was a denial of justice to the petitioners.

The petitioners again repeat and urge that their appeal for a hearing(oral arguments) be considered to render justice to us. If our appeal for a hearing is declined, it will be clear to us that justice is done for attorneys only.

We again urge you to vacate the order.

Respectfully submitted,

Rajeshwar Singh Yadav

Rajeshwar Singh Yadav
376 North Post Road
West Windsor
New Jersey 08550
Nov. 30, 1990

Hon. Shirley Wohl Kram
United States District Judge
Southern District of New York
U.S. Court House - Room 620
Foley Square
New York, New York 10007

Re: Rajeshwar Singh Yadav and Roopa Yadav v. Charles Schwab & Co., Inc.; 89 Civ. 6799 (SWK)

Your Honor,

In response to Mr. Brooks's letter of Oct. 26,1990 I would like to make the following statements.

Mr. Brooks had the opportunity to state all this in his affidavit in opposition to motion for reconsideration and he did not.

To do justice this case should not be tried in absentia just because the defendant is represented by an attorney and we are not.

We urge the court to hear all the facts in person in the court so that justice can be served. We believe we are entitled to justice based on all the facts. It is our

understanding that every case is unique and must b judged on the entirety of all the facts. We will prove i our oral presentation that the arbitrators(one being a attorney at law) had committed egregious error and wer biased.

We respectfully state that if we are denied a hearing an the motion than justice will be a luxury afforded to privileged few and the lives and rights can be crushe for people in our category.

Respectfully,

Rajeshwar Singh Yadav

cc: Daniel J. Brooks

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAJESHWAR SINGH YADAV

AND ROOPA YADAV

Plaintiffs, 89 Civ. 6799(SWK)

Supplement Affidavit

-against-

CHARLES SCHWAB & CO., INC.

Defendant.

Rajeshwar Singh Yadav, being duly sworn,deposes and says.

1. The reply dated Jan. 19,90 was a statement of facts to the best of my knowledge.

2. I have brought to the attention of the court the facts about the arbitrators prejudging the case. If they had not

prejudged the case they certainly should not have refused to sign subpoena which would have brought the truth out about the alleged trading of Oct.,19,87. My request for subpoena of the records and the firm of Conklin Cahill & Co. was to establish the facts about the trade.

The last minute arrangement of calling Mr. Johnson was nothing but a show and tell effort to give the appearance of consideration. Mr. Johnson was not the person who made the decision of the trade at the opening and was not the authority who could provide all the answers. The original records which establish the commencement of the trade and required by New York Stock Exchange were neither supplied by Schwab nor we were allowed to subpoena from Conklin Cahil & Co. These two firms were the only parties directly responsible for the alleged trade and still knowing this fact the arbitrators refused to sign the subpoena, clearly establishes the fact that they had prejudged the case and were not interested in knowing and establishing the facts

about the case.

It is respectfully stated that if a summary judgement is entered dismissing the complaint and Schwab's counter claim is confirmed, it will be a cruel and unusual punishment of destruction of us(the whole family) as victims of Schwab's negligence and the judicial process which crushes those who can not afford an attorney.

We respectfully request the court not to dismiss this complaint and plead for justice.

Respectfully submitted

RAJESHWAR SINGH YADAV

BRIEF SUMMERY

STATEMENT OF FACTS

A Day order to buy 20,000 shares of National Semi Conducter was put for Oct.19,1987. The order was cancelled at 10:53 am on Oct.19,1987 . A day order execution must be reported the same day. Two days later the plaintiff was informed that the cancelled order was filled, which caused all the demages. Plaintiffs have become the victims of Charles Schwab's actions and negligance. As required Charles Schwab must keep the orignal trading slip to prove the trade(its execution and time of execution). Charles Schwab convinently claims it lost the orignal slip. There is no written proof whether the trade took place or noy and at what time.

The plaintiffs had requested New York Stock Exchange (NYSE) for arbitration between Charles Schwab & Co. and the plaintiffs with the understanding and assumption that NYSE will conduct the arbitration in an impartial manner and the rights of the plaintiffs will be protected. The

arbitration was about a disputed trade on Oct. ,19,1987.

Charles Schwab & Co. was required as per NYSE regulations to keep the original slip showing the timing of the trade. Charles Schwab claimed that they lost it. During arbitration Charles Schwab disclosed that the trade is handled by a specialist(Conklin Cahil & Co.) handling the stocks of National Sami Conductor Corporation and the specialist supplies the information for execution of the order and confirms it. The plaintiffs asked the NYSE arbitration counsel that due to this disclosure about the record proving the execution of the trade and the specialist involved in the execution they must be called as a witness to know the facts so that it can be determined whether the trade took place and at what time. Plaintiffs have no legal authority to issue subpoena and requested subpoena be issued. The plaintiffs request was denied. Plaintiffs had requested only the specialists and their records for witness and no other request for any other witness was made. NYSE manipulated at the last minute, presented a witness who

did not have the knowledge of the procedures of execution, the process of matching, did not have the authority of pricing at the opening and did not have any records. The records and persons with complete knowledge of the trade were critical for proving whether the trade took place or not and at what time.

On July 19,1989 Mr David L Carey wrote a letter (mailed on July 20, 1989) that the decision was rendered on June 22,1989. Upon receiving the letter the plaintiff called Mr. Carey (arbitration counsel) and told him that they want to appeal the decision. Mr. Carey told the plaintiff that there is no appeal of the decision in NYSE and the appeal must be filed with in 90 days from the date of the receipt of the decision in New York State Court or Federal Court.

As per procedural instructions officially conveyed as arbitration counsel to the plaintiffs, the plaintiffs filed their appeal in Federal Court with in 90 days time limit from the date of the receipt of the decision. The U.S.District Court Southern District of New York dismissed the appeal

as untimely. NYSE delayed

the information on decision of the arbitration by 30 days.

ARGUMENT 1

THE ACTION WAS FILED WITH IN THE TIME LIMIT

The court has ruled that the plaintiffs were not at fault in the example of the notice of appeal. Following strictly the rule of time limit of filing a Notice of Appeal after the decision of the motion for reconsideration by the District Court the Court of Appeals could have denied the motion for reconsideration but the court did not because of the facts that the plaintiff followed the directions given to them and had acted with in the limitations of the information provided to them. Plaintiffs were directed by the Arbitration Counsel to file the action within 90 days from the day of receiving the decision. Arbitration Counsel was the official and legal authority in conveying the information and processing the information. Based on his acts the time limit starts certainly not earlier than the

day he wrote the letter for conveying the decision of the arbitration. Considering that date, the plaintiffs action was timely and the appeal(action) must not have been dismissed as untimely.

The same standards of consideration if applied in this situation will automatically result in the action as timely. The process and methods of handling the arbitration by NYSE are beyond the controls of the plaintiffs and the plaintiffs must not be victimized because of the mishandling of the arbitration by NYSE.

POINT 1
THE ACTION WAS BROUGHT WITH IN THE TIME LIMIT ALLOWED BY LAW

On receiving the letter from Mr. Carry Arbitration Counsel of New York Stock Exchange Inc. dated 19, 1989(Exhibit A) post marked July 20, 1989(Exhibit B), I contacted Mr. Carry on telephone and said that we want to appeal the decision of the Arbitrators. Mr. Carry (Legal Official of the Stock Exchange conducting the arbitration) told me that I can only go to U.S.District Court or N.Y.State Court for further action with in 90 days from the receipt of the decision.

We have followed and obeyed the legal determination of the officer conducting the arbitration. Any person in our capacity(who is not an attorney to practice law and can not afford an attorney) has no choice except to follow the official and legal determination of the institution conducting the arbitration. It is no fault of ours under any circumstances that the decision was not conveyed to us for a month. There is no way we could take any action before knowing the decision. The law allows a 90

day period and we have abided by the law and filed the action with in the time limit. The time limit established by the court of Sep 22, 1989 only permits about 60 days time not 90 days. It is a hardship as it is to pursue an action of this nature for any person who is not an attorney but with due respect on top of that if we are also denied the time allowed by law is unjust and a denial of our rights.

With due respect we would like to draw the attention of the court that the defendant's attorney knew very well that the decision was not known to us and him till after July 20. 1989 still he misled the court by stating that time limit had expired.

POINT II

CRUEL AND UNUSUAL PUNISHMENT

We respectfully state that if the court's order stands in its present form and we are denied a hearing of the case to state all the facts, it will be cruel and unusual punishment of destruction and devastation of our family. The only fault of ours(or our crime) is that neither of us

are attorneys and can't afford an attorney and followed and obeyed the instructions of the arbitration counsel(legal officer of the Exchange).

We have proceeded with the action in good faith and abided by the law as determined and instructed to us by the arbitration counsel. We could not have done any thing else in our capacity. We should not be sentenced with this cruel and unusual punishment of dismissing our action because of not being attorneys.

In conclusion we urge, request and beg the court to reverse the decision and render justice to us by conducting a hearing to know the facts to make the final determination.

Respectfully Submitted,

Rajeshwar Singh Yadav

PLAINTIFF' REPLY TO THE DEFENDANT'S ATTORNEY'S AFFIDAVIT

1. As stated previously the intent, spirit and the meaning of providing 90 days time for filing an action is to legally grant 90 day time for preparing and filling of the action. If notification was not done for over 30 days intentionally or unintentionally, that should not be held against us and we be deprived of our rights to avail the 90 days time to learn and take action. We in good faith firmly believe (as I was told) that 90 days time limit starts from the date of receiving the notification. It is not a matter of few days but approximately ode month that notice of award was not mailed. We appeal to the court that we be granted equal opportunity of availing 90 days time for learning, preparing and filing for the action. The rule and the law provides 90 days and to say sixty days are enough is contrary to the spirit, intent and meaning of the law. Our action was timely and urge the court for a hearing.

2. We certainly did not lie to the court and I respectfully submitted only true statements. I have attached a sworn copy of the statement to satisfy the defendant's concern.

3. The law required that one is innocent till proven guilty. The proceedings were conducted on the assumption that I was guilty and must prove myself innocent. It is not mere errors of fact or law that the documents which could proven the trade(as required by the Stock Exchange) were not allowed to be subpoenaed but also a case of an improperly and biasly conducted arbitration. If I was an attorney (as stated by the defendant's attorney) I could have subpoenaed the records on my own. To deny us access to the most crucial documents was to deny us equal opportunity and justice and resulted in a biased award against us, which is contrary to the laws of the land. It is not a matter of sound policy but a matter of justice for all (not for only those who can be represented by an attorney or are attorneys)

We respectfully urge the court to reconsider and grant us hearing to render justice.

Respectfully Submitted,

Rajeshwar Singh Yadav

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAJESHWAR SINGH YADAV

ROOPA YADAV

Plaintiff:

v.

89 Civ. 6799 (swk)

Motion to vacate

Order

signed on March

22,1991

CHARLES SCHWAB & CO., INC.,

Defendant.

We respectfully would like to state that we have been victimized because we are pleading for justice as Pro Se. I make the following statement of truth in support for vacating the order.

1. We did file the notice in time (attached is a copy of the docket sheet.)

2. I was told by the Pro Se office that no further action is required from me until notified by the court and i can not do any thing until I hear from the court.

3. We have not received any notice for any action what so ever for further action.

4. On April 2, 1991 I asked the Pro Se office in person that I have not been informed about the Jan. 16 th. 1991 decision of denying the motion for reconsideration and do you have any record that it was mailed to me. I was told to go to records room.

5. The record room clerk told me that the Judge's chamber may have mailed you a copy of the denial, we do not do it.

6 In your chambers I talked to Mr.Jim Frechter and said that I have not been informed about the denial of the motion of reconsideration. I was told that it is possible that it is lost in the building or post office; usually we do mail but occasionally it is possible that it

is not mailed. I stated it is not my fault not to take any further steps if I did not know about the decision.

7. I went to the Pro Se. office and told them that I was told by this office that no further action or steps are required for the appeal till I hear from the court and this order states that I have not taken any further steps to perfect the appeal. Pro Se. clerk asked me whether I received any thing from the court of appeals. I said no. I was directed to go to court of appeals clerk's office to inquire.

8. The court of appeals clerk's office checked their records and told me that they have not received any notice of appeal that is why You have not been notified for any further action. I showed the copy of the docket sheet proving that I filed the notice of appeal in time in August 90. I was directed to go to orders and appeals office.

9. Orders and appeals office clerk checked his records and found that they did not receive the notice of appeal. I showed him the copy of the docket sheet. He

went and got the file and found the notice of appeal still in the file. He prepared a cover sheet (copy attached) attached the notice of appeal and directed me to go and give to court of appeals clerk's office and I did as told.

10. I went to Pro Se office again and asked about the procedure to protect myself from the damages of the order because it is not my fault and we became the victims of this situation. I was told that it is up to the Judge.

11. I again went and talked to Mr. Jim Frechter and asked him about the procedure to protect ourselves from the damages of the order. I was directed to go back to the Pro Se office. I made the statement that I am sorry I am not faulting you but I just want to know the procedure and I have been going back and fourth just to the procedure.

12. I went to the Pro Se. office again and got the same answer it is up to the Judge. You may file the motion to vacate the order. I said it could take six months or more in the mean time damage will be done.

I was told it is up to the Judge.

Based on the above stated facts I respectfully would like to state that we should not be punished because we followed the orders and directions of the court and it is certainly not the lack of action on our part. I would also like to state that we have been punished by the Arbitrators and this court by making decisions against us without knowing the full and detailed truth of the matter. We have repeatedly asked for a hearing but turned down. I believe Justice is not served to us just because we are pursuing it as Pro Se.

We respectfully urge, request and plead before you that this order be vacated immediately so that no further damages can be done to us and again repeat that justice can only be served in this case if a hearing to know all the facts is granted to us.

Respectfully Submitted,

Rajeswar Singh Yadav

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAJESHWAR SINGH YADAV and ROOPA YADAV,	
Petitioners,	89 Civ.6799(SWK)
-against-	ORDER
CHARLES SCFWAB & CO., INC.,	
Respondent.	

A Judgment having been entered on July 26, 1990 in favour of Respondent Charles Schwab & Co., Inc. in the amount of $25,000.00 against Petitioners Rajeshwar Singh Yadav and Roopa Yadav; and Petitioners having moved for reconsideration; and the Court, by order dated January 16, 1991, having denied Petitioners' motion for reconsideration; and it appearing that a notice of appeal having been filed by Petitioners on or about August 27, 1990 with no other steps apparently having been taken by Petitioners to perfect thair appeal, it is hereby

ORDERED that, good cause having been shown, Respondent Charles Schwab & Co., Inc. is

authorized, notwithstanding the filing of Petitioners' notice of appeal, to register the Judgment by filing a certified copy thereof with another United States District Court.

SHIRLEY WOHL KRAM
United States District Judge

Dated: New York, New York
March 22, 1992

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

RAJESHWAR SINGH YADAV and
ROOPA YADAV

Appellants,

-against- Docket No.

91-7337

CHARLES SCHWAB & CO., INC.,

Appellee.

----------x

Heard October 18, 1991
Courtroom #1705
United States Courthouse
40 Foley Square
New York, New York

Before Hon. AMALYA L. KEARSE
Presiding
HON. IRVING R. KAUFMAN
HON. JOSEPH M. McLAUGHLIN
Circuit Court Judges

(Transcribed From Tape)

S & S REPORTING CO., INC.
132 Nassau Street
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A P P E A R A N C E S:

RAJESHWAR SINGH YADAV, Pro Se
376 North Post Road
West Windsor, New Jersey 08550

DANIEL BROOKS, ESQ.
Attorney for Appellee
757 Third Avenue
12th Floor
New York, New York 10017

(Due to Mr. Yadva's accent and the fact that he sounded upset, there may be some inaccuracies in his statement)

JUDGE KEARSE: Rajeshwar Singh Yadav and Roopa Yadav against Charles Schwab & Co., Inc.

MR. YADVA: Your Honor, I apologize for not being an attorney. As far as legal language is concerned, I am an illitrate.

Before this incident, I am sorry to say that I did not know what is the function of the district court or of the fedral courts, and the distinction between state and fedral courts. This is the background I am coming from.

If I was an attorney or I was represented by an attorney, I would not have been standing here as an Appellant, but prehaps maybe an Appellee.

My only comment is that I am pro se, and so far, our treatment by the district court and the arbitrators has been second class, and one cannot be winner when one is considered second class to start with. One could use the term "second class" as a bias treatment.

Since I have only five minutes to make the last plea for our lives, I will be very brief and to the point.

You are here to grant us a hearing, and give us the hope of justice. I believe especially as a pro se, I must be given the opportunity to state one'case in all forms of communication, written and oral. I also believe that oral arguments are established practice, and for the pro se, that is critical because that is the best oppor- tunity for a judge to know and establish the facts of the case for holding the law, justice for all.

Fact 1: An order was placed on October 16, 1987 to be effective for only October 19, 1987.

Fact 2: It is also an established practice in the world of trading, at least in the U.S., that if the order is not filled or reported filled, it is automatically established that no trade took place, and the order is null and void.

Fact 3: It is a universal practice that first come first serve. Charles Schwab allegedly claim that the order was filled first thing in the morning at about 9:30 on October 19, 1987. If it was true, then I must be almost first in line

to be informed about it. For two days, this information was not given, while others whose trade took place after the alleged trade were already informed the same day.

We cannot be made responsible for the actions, mistakes, and negligence of Charles Schwab. The order was cancelled at 10:53 the same morning, October 19, 1987, and if in fact, the order was executed at about 9:30, there was plenty of time for them, more than enough time to be in computer system, and I would have been notified of the execution of the order at that time.

The opportunity of establishing all the facts was never granted to us either gy the arbitrators or the Honorable District Judge.

The rules say that we have ninty days to take action after the arbitration. I showed a copy of the arbiteration order to the pro se clerk, and said that I want to appeal this decision. I was instructed that I can only file a suit, and that is what I did.

We got a handicap to start with as pro se, and then on top of that, we cannot exercise the right of using the

ninty days even further chocks us, and it is a denial of our rights.

The very fact that the arbitrators intentionally withheld information for all creditors is itself a bias treatment of us because only we are the victims of the actions of theirs, and truly we could have had the information of the decision for ninty-one days, and we could have never been allowed to appeal their decision for the denial of rights is illegal.

It is hard for me to believe that the arbitrators had available to them all the cost data the very same day at the time that the decision was taken.

I believe that the decision may have been taken on June 22, but was signed at a later date after all costs were available, which brings close to the file date of July 20, 1989, the date of mailing of the decision, and not June 22, 1989.

Up to July 22, 1989, the decision was private and confidential, and there was no way we could have known about it.

After July 22, 1989, we were sure that we would win the arbiteration. Only on July 22, on the day we received the decision, we knew it really for the first time.

Your Honor, pro se, I have no choice except to follow the recommendation of the arbiteration counsel, the legal authority, and as pro se, the legal determination we certainly filed within ninty days.

I never have any probability nor could achieve the capability by which I could know that the decision was taken more than thirty days prior to receiving. No action -- or the action can be planned or taken in a total vacum. We must not be asked because of the arbitertors' failure to let us know in a timely fashion.

The arbitration was biased. There were only two parties involved in the actual execution of the order, Charles Schwab & Company and Conklin, Cahill & Company.

If I was an Attorney --

JUDGE KEARSE: The time alloted to you has expired.

MR. YADAV: Your Honor, I have only a couple of more pages, and if I could be -- I am not an attorney.

JUDGE KEARSE: These are arguments that you have made in your brief?

MR. YADAV: Not exactly the same thing, Your Honor.

JUDGE KEARSE: Well, the time that we have alloted to you for oral argument has expired, so we will hear from the other side now.

MR. BROOKS: Good morning, Your Honors.

May it please the court, my name is Daniel J. Brooks. I am the attorney for the Appellee.

Judge Kram dismissed this case because a motion to vacate the award was not served within three months of the date of the award.

She used -- she liberally construed the complaint as a motion to vacate, but held that the motion to vacate should have been made three months from the date that the award was filed.

Section 12 of Arbiteration Act states that notice of motion to vacate, modify, or correct an award must be

served upon the adverse party or his attorney within three months after the award is filed or delivered.

I believe Mr. Yadav is contending that the three months should run from the delivery to him of the award, not from the date it was filed, and he is relying on an alleged statement made to him by an attorney at New York Stock Exchange.

This Court held in the Florasinth (phonetic) case, which we have cited, that the three month period is to be construed very strictly, and that common law equatable exceptions, such as what Mr. Yadav was allegedly told by the New York Stock Exchange, should not be read into the statue.

Although in certain circumstances, I could conceive of an inequitable result in this case, even from the date he admits he received the award, he still had sixty days left from the date that the award was filed in which to move to vacate.

Equally significantly, and prehaps more significantly, is that no notise of motion to vacate ever was served

upon Schwab.

All that Mr. Yadav did was file a complaint in this case which treated the arbiteration as though it had never happened. He never said there was an arbiteration or an award, and never assigned reasons why the award should be vacated or disregarded or set aside or invalidated.

It was only after Schwab moved for summary judgement in December of 1989, five months after he admittedly received the award, that he finally got around to assigning reasons why the award should be vacated. This was in January of 1990.

We think that the order below can be affirmed on that ground as well, because he has no reasons for vacating under Section 10 of Arbiteration Act.

But I would point out that Judge Kram, I think, was oversolicitous to him. Judge Kram cited a case, the Pennsylvania Engineering case, which held that filing a complaint which treats the arbiteration as though it never happened --

JUDGE KAUFMAN: Was there any evidence that he, in fact, did receive it?

For example, did you send it by certified mail or anything of that kind?

MR. BROOKS: The evidence that I have seen supports the contention that he did not receive it for approximately thirty days. I don't know why that happened.

When I received it, I sent it to him. This is all in the appendix, but what I am saying is, Your Honor, even if you go from the date that he received it, he did not, within three months of that date, make a motion to vacate.

Even though he is pro se litigant to make a motion to vacate in which he says there was an award, and I think the award is invalid for the following reasons, the reasons contained in Section 10. That is not asking too much.

He was able to do that once we moved for summary judgment. He was able to assign two totally invalid

reasons. He claims he heard the arbitrators speaking outside of hearing room and pre-judging his case. He never mentioned that to the arbitrators.

He has the burden of proof on a motion to vacate. He hasn't seen fit to obtain a transcript of the hearing, but it is uncontroverted in my affidavit that the arbitrators were never asked to recuse themselves. He never complained that he had allegedly heard them pre-judging his case.

JUDGE KAUFMAN: My question was how was the notice sent?

MR. BROOKS: The award?

It was sent to him with a covering letter, which he has attatched, from the New York Stock Exchange, I think certified mail.

Your Honor, I believe he is correct that for whatever reason, the New York Stock Exchange, waited thirty days to mail it to him and to me. I don't know why they did that. I don't know why. Ithink he is correct. We are not disputing that, but I am saying that he should have

assigned reasons.

Section 12 -- normally, a fedral action is commenced by filing of a complaint under Rule 3 of the Fedral Rules of Civil Procedure. Section 12 of the Arbiteration Act requires service within three months, which indicates, I think you can infer, that Congress intended that the prevailing party in an arbitration receive notice within three months that the losing party is contesting the award and is seaking to vacate it for one of the very narrow grounds that are provided in Section 10. This was not done.

I know he is pro se, but instead of filing a complaint which pretended there never was an arbitration, he could have said ther was an arbitration, I lost, but the arbitrators were biased, I heard them saying -- pre-judging the case, and his other reason, which is that a subpoena supposeddly was never signed.

JUDGE KEARSE: All right, we understand your position, and your time, too, has expired.

Thank you.

We will reserve decision.

--oo0oo--

I hereby state that the foregoing is a true and acurate transcript of the minutes of this hearing, to the best of my ability.

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NEIL M. SEFF - Hearing Reporter